

**REMARKS**

In the Final Office Action<sup>1</sup>, the Examiner rejected claims 1-39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,000,121 to Jarosz ("Jarosz") in view of U.S. Patent Application Publication No. 2004/0064563 of Kauhanen et al. ("Kauhanen").

By this Amendment, Applicant has amended claims 1, 14, and 27, and canceled claims 10, 11, 23, 24, 36, and 37. The subject matter of the canceled claims has been incorporated into claims 1, 14, and 27. Claims 1-9, 12-22, 25-35, 38, and 39 are currently pending with claims 1, 14, and 27 being independent. Based on the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejection.

**I. Rejection of Claims 1-39 under 35 U.S.C. § 103(a)**

Applicant respectfully traverses the rejection of claims 1-39 under 35 U.S.C. § 103(a) as being unpatentable over Jarosz in view of Kauhanen. A *prima facie* case of obviousness has not been established.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). "The mere fact that references can be combined or modified does

---

<sup>1</sup> The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” M.P.E.P. § 2143.01(III) (emphasis in original). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I) (emphases in original).

“[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

Amended independent claim 1 recites, among other things, “transmitting over [a] network an indication from [a] first node [of a first gateway] to [a] second node [of a second gateway] that [a] third node [of the first gateway] has failed,” and “reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between [a] fourth node and the first node after the indication has been received by the second node.” Jaros and Kauhanen, taken alone or in combination, fail to teach or suggest the recited subject matter.

Instead, Jaros discloses transmitting a heartbeat packet, which is merely a failure detection signal. Jaros, col. 3, lines 52-64. Transmission of a heartbeat packet, by itself, does not indicate that a node has failed. *Id.* Only when a node fails to respond to a heartbeat signal within a predetermined time (“inaction”), the failure of the node is detected. *Id.* Because the “inaction” indicates the failure of the node, there is no transmission of an indication of failure in the system of Jaros. *Id.* Thus, Jaros fails to teach or suggest “transmitting over a network an indication that . . . [a] node has failed,” as recited in amended independent claim 1.

In addition, even assuming that a heartbeat packet constitutes an indication that a node has failed (a notion that Applicant disputes), Jaros discloses transmitting a heartbeat packet from a client to a gateway in a client-gateway connection. Jaros, col. 3, lines 52-64. Nowhere does Jaros teach or suggest transmitting a heartbeat packet from a node of one gateway to a node of another gateway. Thus, even under the assumption, Jaros fails to teach or suggest “transmitting over [a] network an indication from [a] first node [of a first gateway] to [a] second node [of a second gateway] that [a] third node [of the first gateway] has failed,” as recited in amended independent claim 1.

Moreover, Jaros discloses selecting another third node for use when there is no answer to a heartbeat packet. Jaros, Abstract, and col. 3, lines 52-64. The first node client that is originally connected to the failed third node simply connects to a new third node when failure is detected. *Id.* Thus, Jaros discloses at most selecting another node in one end but not in both ends, and thus fails to teach or suggest “reconfiguring a first data, the first data initially configured to be transmitted over the network **between**

the second node and the third node, to be transmitted over the network between [a] fourth node and the first node after the indication has been received by the second node,” as recited in amended independent claim 1 (emphasis added).

Kauhanen fails to cure these deficiencies of Jarosz. Kauhanen is directed to a method of negotiating a reconfiguration of a communication link in a communications system. Kauhanen, Abstract. Thus, Kauhanen does not teach or suggest “transmitting over [a] network an indication from [a] first node [of a first gateway] to [a] second node [of a second gateway] that [a] third node [of the first gateway] has failed,” as recited in amended independent claim 1 and the Final Office Action does not allege otherwise.

Kauhanen does not also teach or suggest “reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between [a] fourth node and the first node after the indication has been received by the second node,” as recited in amended independent claim 1. Instead, Kauhanen teaches performing a reconfiguration of a communication link due to a change in transmission bandwidth. Kauhanen, Abstract, and paragraphs [0014] and [0015]. Nowhere does Kauhanen teach or suggest that the nodes that are initially configured to transmit data are no longer used in transmission after the reconfiguration.

For at least these above reasons, a *prima facie* case of obviousness has not been established with respect to amended independent claim 1. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of amended independent claim 1 based on Jarosz and Kauhanen.

Amended independent claims 14 and 27, although of different scope, recite features that are similar to the features recited in amended independent claim 1. For reasons at least similar to the reasons set forth above with respect to amended independent claim 1, a *prima facie* case of obviousness has not been established with respect to amended independent claims 14 and 27. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of amended independent claims 14 and 27 based on Jarosz and Kauhanen.

Dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 are allowable at least by virtue of their dependence from an allowable independent claim. In addition, the dependent claims recite further distinctions over the cited references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of dependent claims 2-9, 12, 13, 15-22, 25, 26, 28-35, 38, and 39 based on Jarosz and Kauhanen.

## **II. Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

The preceding arguments are based on the arguments presented in the Final Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Final Office Action. The pending claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability. Furthermore, the Final Office Action contains a

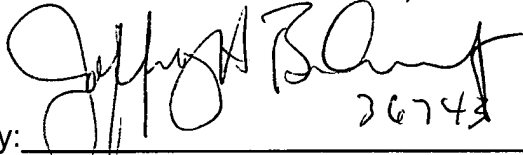
number of statements reflecting characterizations of the related art and the claims.

Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:  26743

Dated: January 23, 2008

Robert E. Converse, Jr.

Reg. No. 27,432

(202) 408-4000